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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,904	09/11/2003	Daniel J. Damon	MPW 3H3	6374

23581 7590 04/27/2005

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EXAMINER

PHAN, HAU VAN

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/660,904

Applicant(s)

DAMON, DANIEL J.

Examiner

Hau V Phan

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-25 is/are allowed.
- 6) ☒ Claim(s) 26-30, 33, 34 and 36 is/are rejected.
- 7) ☒ Claim(s) 31, 32 and 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Acknowledgment*

1. The amendment filed on 3/18/2005 has been entered..

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 26-30, 33-34 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Dignitti et al. (6,508,322).**

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Dignitti et al. in figures 1-12, discloses a children's ride-on vehicle having at least a first battery-powered component. The vehicle comprises a body (16) having at least

one seat for a child and a battery compartment adapted to receive a battery assembly, wherein the battery compartment includes an aperture sized to permit a battery assembly to be selectively inserted into and removed from the battery compartment. Dignitti et al. also disclose a battery-powered motor assembly (24), at least one user input device (26) adapted to actuate the battery-powered motor assembly, a plurality of wheels (20) rotatably coupled to the body, a battery assembly (14) adapted to provide power to the battery-powered motor assembly and a battery retainer assembly (10) adapted to selectively retain the battery assembly within the battery compartment. The battery retainer assembly comprises a retaining member (92, figures 11-12 )coupled for pivotal movement relative to the battery assembly, wherein the retaining member is adapted to be pivoted between a closed position, in which the retaining member obstructs removal of the battery assembly from the battery compartment through the aperture, and an open position, in which the retaining member does not obstruct removal of the battery assembly from the battery compartment through the aperture and in which the retaining member is adapted to displace the battery assembly at least partially through the aperture.

Regarding claim 27, Dignitti et al. disclose the battery assembly including a proximal surface that generally faces the aperture when the battery assembly is inserted into the battery compartment and the retaining member is in the closed position, and further wherein in the closed position, a retaining portion of the retaining member is adapted to extend across at least a portion of the proximal surface of the battery assembly.

Regarding claim 28, Dignitti et al. disclose in the closed position, the retaining portion is adapted to engage the proximal surface of the battery assembly.

Regarding claim 29, Dignitti et al. disclose in the closed position, the retaining portion is adapted to extend in a spaced-apart relationship with the proximal surface of the battery assembly.

Regarding claim 30, Dignitti et al. disclose the retaining member further including a handles (the longitudinal side of the cover, can be used as a handle) and further wherein in at least the open position, at least a portion of the handle extends through the aperture and out of the battery compartment.

Regarding claim 33, Dignitti et al. disclose the battery compartment including a support surface that is adapted to at least partially support the battery assembly when the battery assembly is inserted into the battery compartment.

Regarding claim 34, Dignitti et al. disclose the battery compartment including at least one recessed region into which at least a portion of the retaining member extends when the retaining member is in the closed position (as shown in figure 12).

Regarding claim 36, Dignitti et al. disclose the retaining member, which is biased to pivot to the open position.

***Allowable Subject Matter***

4. Claims 1-25 are allowed.
5. The following is an examiner's statement of reasons for allowance.

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The prior art does not teach the children's ride-on vehicle as recited in claim 1, which includes a battery retainer assembly adapted to selectively retain the battery assembly within the battery compartment. The battery retainer assembly comprises a retaining member comprising a base portion adapted to selectively engage the distal surface of the battery assembly and a retaining portion coupled to the base portion and adapted to selectively obstruct removal of the battery assembly from the battery compartment through the aperture, wherein the retaining member is adapted to be selectively pivoted between a first position, in which the base portion extends generally between the aperture and the distal region of the battery compartment and the retaining portion is positioned to permit the battery assembly to be removed from the battery compartment through the aperture, and a second position, in which the base portion is moved generally away from the aperture relative to the first position and the retaining portion is positioned to obstruct removal of the battery assembly from the battery compartment through the aperture until the retaining member is returned to the first position. This recitation, in combination with the rest of the recited elements, clearly defines over the prior art.

6. Claims 31-32 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments filed 3/18/2005 have been fully considered but they are not persuasive.
8. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the retainer assembly does not disclose or suggest any structure **for selectively displacing the battery assembly at least partially out of the battery compartment** (Notice at the end of claim 26, recites "the retaining member is adapted to displace the battery assembly at least partially through the aperture") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V Phan whose telephone number is 571-272-6696. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christ Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Hau V Phan*  
*4/24/05*

Hau V Phan  
Primary Examiner  
Art Unit 3618